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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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|---------------------------|---|--|
| UNITED STATES OF AMERICA, |) | NO. 4:21CR0325 YGR |
| |) | |
| Plaintiff, |) | AMENDED SENTENCING OBJECTIONS AND |
| |) | MEMORANDUM |
| v. |) | |
| |) | October 5, 2023 |
| CLEMENTE GARCIA BARRAZA, |) | 2:00 p.m. |
| |) | The Hon. Yvonne Gonzalez Rogers |
| Defendant. |) | |
| |) | |
| |) | |

FACTS:

In September, 2019, agents were listening on a wiretap and heard references to “Viejo”, Spanish for “Old Man”. Mr. Barraza was pulled over, searched and questioned in English. He was told that he was not being arrested. He was not arrested. He spoke to the police, and admitted possession of drugs in the car. Two years later, he was arrested early in the morning on his way to work, and brought to court, Mirandized and questioned in Spanish, with an interpreter. He confessed to the same police about the same possession, and counsel was appointed. He pled not guilty and was ordered released without having to pay a monetary bond. He was placed on supervision with Pretrial Services. He never violated, and consistently tested clean.

After review of the initially massive case, the AUSA offer was for probation, if Barraza qualified. On February 16, 2023, Clemente Garcia Barraza appeared before this court with counsel and an interpreter in the Spanish language and entered his guilty plea to Count 4 of the Indictment pursuant

1 to a written plea agreement which had been translated to him by a certified interpreter. Mr. Barraza was
2 already safety valve eligible at the time of the plea. The purpose of the safety valve is to permit low-
3 level mules with little to no information to avoid long sentences and to receive results that higher-ups
4 obtain. He meets the criteria set forth in the guidelines:

- 5 1) He has no more than one criminal history point (USSG §5G1.2(a)(1);
- 6 2) There is no violence or credible threats of violence, including weapons; (USSG
7 §5G1.2(a)(2);
- 8 3) No death or serious injury (USSG §5G1.2(a)(3);
- 9 4) Not organizer, leader or supervisor, no CCE (USSG §5G1.2(a)(4);
- 10 5) Barraza truthfully provided information (USSG §5G1.2(a)(5);

11 Since these charges were filed, and Mr. Barraza entered his plea of guilty, AG Merrick Garland
12 issued a memorandum on December 16,2022, regarding mandatory minimum sentences. This case is not
13 charged as a mandatory minimum in the first place. Mr. Barraza is eligible for safety valve, and, under
14 the Garland criteria, should be given probation or supervised release as recommended by the AUSA.
15 The Garland Memo specifically states that if the person meets the stated criteria, is a “mule”, this court
16 should provide a variance to probation or supervised release with credit for time served.

17 **FAMILY, WORK AND COMMUNITY TIES:**

18 Mr. Barraza has lived in Santa Clara County for approximately thirty years. He and his wife
19 have raised their two daughters, Beatriz and Karely to become educated, productive members of society.
20 This case was delayed to sentencing in October to accommodate Karely’s wedding, which took place in
21 August. As the PSR states, Clemente Barraza and his wife have also helped to raise other family
22 members, including a nephew (PSR 42). Mr. Barraza’s family has been instrumental in affirming his
23 sobriety. (PSR 38). He works full-time as a landscaper, and, as the PSR states, he has a modest net
24 income of \$3,977.50 a month and a net savings of \$600. He and his wife, who works in a factory, have
25 raised their two daughters, Beatriz and Karely to become educated, productive members of their
26 community, working for a dental clinic and a law firm, respectively.
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Mr. Barraza has had continuous sobriety, though without CAP and ATIP. He is hard-working, helpful, he cooks for family gatherings and has enjoyed his sobriety and freedom from drug use. From the very first day, Mr. Barraza believed he would not be arrested, because the officers told him that, in English. They did not record that interview, though they did make notes. The officers seized the drugs from his car, and he showed them where he kept them. A variance will prevent a grave injustice, and permit Mr. Barraza to continue to support his family. His involvement in this case was to support his drug use. He will not get into trouble again.

CUSTODY WILL DISRUPT WORK AND FAMILY:

This court is permitted, by statute and case law, to provide a variance to the recommended sentence in the Guidelines. The court is no longer bound by the Guidelines, which are advisory. *United States v. Booker*, 543 U.S. 220 (2005). The factors to be considered are set forth in 18 USC §3553. In *Gall v. United States*, 552 U.S. 38 (2007), the court affirmed a downward variance to probation. The court should do the same here. This would permit Mr. Barraza and his family to remain securely ensconced in the community.

OBJECTIONS:

PARAGRAPH 35: Zazueta is his mother's maiden name.

PARAGRAPH 58: There is no mandatory minimum, therefore, this court may sentence Mr. Barraza to probation, or, in the alternative, to time served and Supervised Release. After his plea, the Attorney General released a memo stating that mandatory minimum sentences in such cases should be avoided. Mr. Barraza qualified for Safety Valve before he was even arrested. On the day of his arrest, he discussed what had taken place already. That discussion was recorded.

PARAGRAPHS 61 & 62: The statute, 21 USC 841(b)(1)(C), does not preclude probation. It precludes probation for a mandatory minimum, which is neither charged nor otherwise considered. 21 USC 841(b)(1)(C).¹

¹ Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence. 21USC§841(b)(1)(C)

1 **CONCLUSION:**

2 Probation is appropriate, but if it is not, Credit for Time Served is appropriate with one year
3 Supervised Release. Mr. Barraza has been being supervised by pretrial services, but he is ineligible for
4 continued participation in programs. He has been here for thirty years. He has worked, and with the
5 help of pre-trial services, he no longer has a drug problem, which was the reason for this violation.
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9 DATED: September 22, 2023

/s/Ann McGlenon_____
ANN McGLENON
Counsel for Defendant
CLEMENTE GARCIA BARRAZA